IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8338 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARUN HABIBBHAI GHANCHI

Versus

STATE OF GUJARAT

Appearance:

MS NIRMALA J JHALA for Petitioner

MR AJ DESAI AGP for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/02/2000

ORAL JUDGEMENT

#. Heard Ms.S.G.Patel, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 8-5-99 passed by respondent

No. 2 - The Commissioner of Police, Rajkot against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B on running page 19 which interalia indicate that the petitioner is alleged to have been involved in 5 prohibition cases registered at different police stations of the Rajkot City. That the said cases are registered in between 7-3-1998 to 30-4-1998. The first case has been registered vide C.R. No : 52/98 is pending for trial in the court while the rest of the cases are pending for further investigation.

#. Over and above, that two witnesses on assurance of their anonymity have given their statement vide date 3-5-99 and 4-5-99 against the bootlegging activities of the petitioner and have narrated the incidents dated 3-1-99 and 7-1-1999 respectively. That on the basis of the said material, the respondent No. 2 - The Commissioner of Police, Rajkot as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail granted to the petitioner though available under Section 437(5) of the CrPC.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved

and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that in para 7 of the grounds of detention, the detaining authority has observed that the detenu is on bail in respect to C.R. No : 52/98 while, he is in judicial custody in respect to all the other cases which are pending for further investigation. It is further observed that the detenu is likely to apply for bail and having got himself released on bail, is likely to continue his anti social activities.

#. That despite due service of rule, no affidavit appears to have been filed on behalf of any of the respondents. That the grounds of detention does not disclose any fact from which, it could be inferred that despite making attempt against the bail granted to the petitioner in C.R. No : 52/98 vide order dated 7-3-1999, it is not likely to be cancelled and that the petitioner is likely to continue his bootlegging activities, having got himself released on bail in rest of the cases in which he has been arrested.

#. Thus, there is non application of mind apparent in the grounds of detention, the detention order cannot be sustained.

##. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

##. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 8-5-1999 passed by respondent No. 2 - The Commissioner of Police, Rajkot against the petitioner is hereby quashed and set aside. The petitioner - HARUN HABIBBHAI GHANCHI is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 22-2-2000 [A.K.Trivedi, J.]

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